

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
ILLINOIS BELL TELEPHONE COMPANY)
)
Application for review of) No. 98-0252
alternative regulation plan.)
)
)
ILLINOIS BELL TELEPHONE COMPANY)
)
) No. 98-0335
Petition to rebalance Illinois)
Bell Telephone Company's carrier)
access and network access line)
Rates.)
)
)
)
CITIZENS UTILITY BOARD AND THE)
PEOPLE OF THE STATE OF ILLINOIS)
)
vs.) No. 00-0764
)
ILLINOIS BELL TELEPHONE COMPANY)
)
Verified complaint for a)
reduction in Illinois Bell)
Telephone Company's rates and)
other relief.)

Chicago, Illinois
February 17, 2005

Met pursuant to notice at 10:00 a.m.

BEFORE :

MS. EVE MORAN, Administrative Law Judge.

1 APPEARANCES:

2 MS. LOUISE A. SUNDERLAND
225 West Randolph Street
3 Chicago, Illinois 60606
 Appearing for Illinois Bell;

4

5 MR. DAVID CHORZEMPA
222 West Adams, Suite 1500
6 Chicago, Illinois 60606
 Appearing for AT&T;

7 MR. MATTHEW L. HARVEY
160 North LaSalle Street, Suite C-800
8 Chicago, Illinois 60601
 Appearing for Staff;

9

10 MR. ALLAN GOLDENBERG
69 West Washington Street, Suite 3130
Chicago, Illinois 60602
11 Appearing for the Cook County State's
 Attorney's Office;

12

13 MR. JACK PACE
30 North LaSalle Street, Suite 900
Chicago, Illinois 60602
14 Appearing for the City of Chicago;

15 MS. KAREN L. LUSSON
349 S. Kennington Avenue
16 LaGrange, Illinois 60525
 Appearing for the Citizen's Utility Board;

17

18 MS. SUSAN L. SATTER
100 West Randolph Drive
Chicago, Illinois 60601
19 Appearing for the People of the State of
 Illinois.

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22 SULLIVAN REPORTING COMPANY, by
Tracy L. Overocker, CSR

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-direct</u>	<u>Re-cross</u>	<u>By Examiner</u>
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None.

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
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None so marked.

1 JUDGE MORAN: Pursuant to the direction of the
2 Illinois Commerce Commission, I call Dockets 98-0252,
3 98-0335 consolidated with Docket 00-0764. This is
4 Illinois Bell Telephone Company's application for
5 review of alternative regulation plan, a petition to
6 rebalance Illinois Bell Telephone Company's carrier
7 access and network access line rates; and a complaint
8 by the Citizens Utility Board and the people of the
9 State of Illinois versus Illinois Bell Telephone
10 Company for a reduction in Illinois Bell Telephone
11 Company's rates and other relief.

12 This matter is on remand from the
13 Illinois Appellate Court and may I have the
14 appearances for the record, please.

15 MS. SUNDERLAND: On behalf of Illinois Bell
16 Telephone Company, Louise A. Sunderland, 225 West
17 Randolph Street, Chicago, Illinois 60606.

18 MR. CHORZEMPA: On behalf of AT&T
19 Communications of Illinois, Inc., David Chorzempa,
20 C-h-o-r-z-e-m-p-a, 222 West Adams, Chicago, Illinois
21 60606.

22 MR. HARVEY: Appearing for the Staff of the

1 Illinois Commerce Commission, Matthew L. Harvey, 160
2 North LaSalle Street, Suite C-800, Chicago, Illinois
3 60601-3104.

4 MR. GOLDENBERG: Appearing on behalf of the
5 Cook County State's Attorney's Office, Allan
6 Goldenberg, Assistant State's Attorneys, 69 West
7 Washington Street, Suite 3130, Chicago, Illinois
8 60602.

9 MR. PACE: On behalf of the City of Chicago,
10 Jack Pace, Senior Counsel, 30 North LaSalle Street,
11 Suite 900, Chicago, Illinois 60602.

12 MS. LUSSON: On behalf of the Citizens Utility
13 Board, Karen Lusson, L-u-s-s-o-n, 349 South
14 Kennington Avenue, LaGrange, Illinois 60525.

15 MS. SATTER: On behalf on behalf of the People
16 of the State of Illinois, Susan L. Satter, 100 West
17 Randolph Street, Chicago, Illinois 60601. Just for
18 the record, this is Regise (phonetic) Garg, G-a-r-g,
19 and he's a new attorney in our office, but he hasn't
20 appeared in this case.

21 JUDGE MORAN: Okay. That's fine. Thank you,
22 and welcome.

1 The last time we met there was some
2 disagreement as to what the Appellate Court has
3 required this Commission to do on remand. There are
4 two matters on remand. One seemed non-controversial
5 and I think the parties were going to get together
6 and draft some language that would be acceptable to
7 them on that issue and that would be the issue of the
8 Remedy Plan.

9 There was more concern with what would
10 be done with the capital spending requirement and,
11 therefore, it was agreed that the parties would
12 submit initial briefs on the scope of remand and
13 reply briefs on the scope of remand. Despite the
14 ALJ's best efforts, she has not yet completed --
15 well, I have. I have completed the ruling on that
16 issue, I have not gotten it in shape to send out as
17 yet. I can, however, and I have gone through that
18 ruling and I can give you the highlights, okay.

19 All right. The first thing I looked
20 at is what the Court said. The Court states its
21 determination in terms of reversal. There's no
22 language that says reversed and remanded until you

1 get to the very, very end of the order there. And
2 the only time the Court uses the term "remand," is
3 when it states that it is remanding for entering an
4 order consistent with its opinion. Consistent with
5 its opinion brings the reversal language squarely
6 into view and, therefore, I see this as an outright
7 reversal of that requirement.

8 The second point is, as I see it, no
9 discretionary authority on the part of the Commission
10 to be exercised in this matter. The authority that
11 has been cited in the briefs makes clear that the
12 Commission is bound to do exactly as the Court
13 directs. The Hartigan 1 opinion was the only thing
14 that troubled me and when I read that opinion in full
15 and not on the one sentence that was highlighted, it
16 shows that the Hartigan opinion is in accord with all
17 the other authority.

18 Here, as I see it, there's no remand
19 for the taking of new evidence and no remand for a
20 new assessment of the existing record. In fact, the
21 Court reviewed the existing record and found the
22 evidence therein to be insufficient. We are in no

1 position to reverse the Court's determination.

2 The third point is that there is
3 indication that the Court said there was some
4 evidence of need for spending requirement. I see
5 that as a simple observation by the Court. This
6 language does not rise to the level of a finding and
7 even at that, some evidence is not sufficient or
8 substantial evidence such as the law would require.
9 The short of it is, whatever the Court said in that
10 regard is only dictum.

11 All that remains and all that can be
12 lawfully done on remand is for the Commission to
13 enter an order consistent with the opinion and that
14 opinion reverses the spending requirement. So this
15 Commission will need to enter an amendatory order
16 that on the basis of the Court's opinion, removes in
17 its entirety the spending obligation put on SBC.
18 Thus, a proposed order on remand needs to be drafted
19 reflecting this pronouncement and the agreed upon
20 language of the parties with respect to the Remedy
21 Plan issue. That's the short of it. I expect to --
22 let's see, what's today.

1 MR. HARVEY: The 17th, Thursday.

2 JUDGE MORAN: Thursday. Then I probably won't
3 get it out by tomorrow but I will get out a detailed
4 ruling at the early part of next week saying
5 basically what I've said to you today.

6 MR. HARVEY: And just to be clear, your Honor,
7 to the extent anybody would want to take an
8 interlocutory appeal from that --

9 JUDGE MORAN: Exactly.

10 MR. HARVEY: -- that would start to run from
11 the date you issued your written order?

12 JUDGE MORAN: Exactly. Exactly. Because
13 otherwise it just wouldn't make sense. But you know
14 where I'm heading.

15 MS. SUNDERLAND: Okay. Are you looking at the
16 parties to present a draft proposed order to you or
17 are you going to do it yourself on this one?

18 JUDGE MORAN: On this, I think I could probably
19 work on the language. I think it's going to be
20 pretty short and may just reflect some of the ideas
21 that the analysis that's in my ruling and this other
22 language is --

1 MS. SUNDERLAND: Is being worked on.

2 MR. HARVEY: Is being reviewed by the
3 interested parties.

4 JUDGE MORAN: -- being worked on. Good. Good.
5 And, again, it would come out as a proposed order so
6 that if anybody does agrees with the language.

7 MS. SATTER: I guess it's not really
8 interlocutory review, it would be exceptions.

9 JUDGE MORAN: No. No. No. I'm issuing a
10 ruling. Any party has a right to take my ruling up
11 to the Commission on interlocutory review.

12 MS. SATTER: Okay. So it would be
13 interlocutory review.

14 MR. HARVEY: Non-taking of evidence.

15 MS. SUNDERLAND: But not taking interlocutory
16 review does not preclude them from filing
17 exceptions --

18 JUDGE MORAN: To the proposed language, of
19 course.

20 MS. SUNDERLAND: -- to the proposed order that
21 would make the same point.

22 JUDGE MORAN: Of course.

1 MS. SUNDERLAND: You have a choice.

2 MR. HARVEY: Actually, you could do both.

3 MS. SUNDERLAND: You could do both.

4 JUDGE MORAN: You could do both.

5 MS. SUNDERLAND: But you don't have to do the
6 interlocutory review.

7 MS. SATTER: That was my question.

8 MS. SUNDERLAND: You don't have to. You don't
9 waive anything by not doing interlocutory review.

10 MS. SATTER: Being it's a proposed order, it's
11 going to the Commissions and we'll file exceptions to
12 that?

13 MS. SUNDERLAND: Right.

14 MS. SATTER: Is that the correct process?

15 JUDGE MORAN: Well, no.

16 MS. SATTER: Because I just want to make sure
17 the process is correct because, you know --

18 JUDGE MORAN: If you disagree with the
19 ruling -- the ruling is basically no new evidence, no
20 review of existing record.

21 MS. SATTER: Right. And we will disagree with
22 it.

1 JUDGE MORAN: If you disagree with that, then I
2 propose that you take an interlocutory review.

3 MS. LUSSON: But then also file exceptions too?

4 JUDGE MORAN: Well, I don't know what the time
5 line -- I can't remember the time line for
6 interlocutory review but I know --

7 MR. HARVEY: I did know it at one point.

8 MS. SUNDERLAND: 14 days. But she doesn't have
9 the proposed order out yet. I mean, the proposed --

10 MS. LUSSON: Are you going to issue the ruling
11 and then a proposed order or will it come at the same
12 time?

13 JUDGE MORAN: No. The ruling will come at the
14 beginning of the next week. The proposed order
15 language, I don't know how soon I'll get to that,
16 I've got other cases that I've got to -- I'm
17 constantly trying to squeeze in that I have deadlines
18 on and you know --

19 MS. SUNDERLAND: The imputation.

20 JUDGE MORAN: -- the imputation case is driving
21 me crazy, so --

22 MS. SUNDERLAND: For those of us who are filing

1 briefs in both cases over the last three weeks, it's
2 driving everybody crazy.

3 JUDGE MORAN: And you know you have a right to
4 take interlocutory review, you know where I'm going,
5 so I would suggest that if you want to do that, you
6 want to do that as soon as possible.

7 MS. SATTER: I thought you said you'd have a
8 proposed order out the early part of next week so --

9 MS. SUNDERLAND: No.

10 JUDGE MORAN: No. No. No. My ruling. This I
11 just gave you a quick --

12 MR. HARVEY: This isn't the ruling itself, this
13 is the -- what we've heard today is sort of a --

14 MS. SATTER: It's not the proposed order
15 itself?

16 JUDGE MORAN: It's the ruling with --

17 MR. HARVEY: Theatrical trailer of the ruling.

18 JUDGE MORAN: Yeah. Thank you. Thank you.
19 That's exactly it.

20 MS. SATTER: Okay. So whatever -- the first
21 written item that we get, we will respond to, whether
22 it's a proposed order or whether it's --

1 JUDGE MORAN: Right.

2 MS. SATTER: -- an order --

3 JUDGE MORAN: Right.

4 MS. SATTER: -- in the case?

5 JUDGE MORAN: Right. Right. Right.

6 MS. SATTER: Okay. Okay. We'll just have to

7 see what you issue and we'll respond accordingly.

8 JUDGE MORAN: Right.

9 MS. SATTER: Okay.

10 MR. HARVEY: You get two bites at the apple.

11 MS. SATTER: This is the Commission.

12 MS. SUNDERLAND: An infamous phrase.

13 JUDGE MORAN: Well, I think depending on what

14 the Commission would do on an interlocutory review

15 may change every --

16 MR. HARVEY: Yeah, exactly.

17 JUDGE MORAN: May change things either way.

18 I brought out this preview of the

19 ruling only to see if parties have anything they want

20 to say to me before I do issue that final ruling?

21 MS. SATTER: I think we said it in our brief.

22 JUDGE MORAN: Okay.

1 MS. SATTER: I mean, we could reargue our
2 brief, but --

3 JUDGE MORAN: That's fine.

4 MS. SATTER: -- we don't agree.

5 JUDGE MORAN: That's fine.

6 MS. SUNDERLAND: I do have one question.

7 JUDGE MORAN: Sure.

8 MS. SUNDERLAND: They filed that request for
9 administrative notice.

10 MS. SATTER: Yeah.

11 MS. SUNDERLAND: Which, I presume based on this
12 ruling, is more or less moot, do I need to file --

13 JUDGE MORAN: No.

14 MS. SUNDERLAND: -- a response to it?

15 JUDGE MORAN: No.

16 MR. PACE: Hold it, I'm sorry. If it's moot,
17 then that --

18 MS. SUNDERLAND: Is it granted?

19 MR. PACE: -- does that go up to the Commission
20 as part of the interlocutory appeal of the record
21 here?

22 MR. HARVEY: It might be a good idea just to

1 specifically deny those motions or take some steps
2 with --

3 JUDGE MORAN: Oh, okay. I understand what
4 you're saying.

5 MR. HARVEY: -- so that they get that T'd up as
6 well.

7 MS. SATTER: I mean, you don't have to deny it.
8 You don't have to deny administrative notice in order
9 to reach your result.

10 MS. SUNDERLAND: Yeah. Well, I mean, they go
11 together --

12 MS. SATTER: In order to reach the result?

13 MS. SUNDERLAND: They go to together.

14 MR. HARVEY: Yeah, I mean, if the ruling is
15 we're not taking any more evidence, granting the
16 motion to adduce the evidence is sort of --

17 JUDGE MORAN: Right.

18 MR. HARVEY: -- a Monty Python movie.

19 JUDGE MORAN: It's subsumed within that --

20 MS. SUNDERLAND: And if we're not reopening --
21 I mean, you can't take administrative notice in a
22 closed record, I mean, you have to open the record --

1 JUDGE MORAN: Exactly.

2 MS. SUNDERLAND: -- to take administrative
3 notice, so it's kind of a defunct proposition.

4 MS. SATTER: I'm not sure that that's really
5 correct. I mean, the Court can take administrative
6 notice in the context of a motion, that's part of the
7 purpose of administrative notice or judicial notice.
8 The question then is, if -- if the decision is based
9 on anything besides the precise language of the order
10 or the law, you would have to consider the
11 administrative notice petition because Staff said
12 things like, Competition is increasing. Well, if you
13 are going to consider things like that on the Staff
14 side --

15 JUDGE MORAN: Yeah, but I don't consider that.

16 MS. SATTER: -- I think that if that's clear
17 that none of that was considered --

18 JUDGE MORAN: I consider nothing but the
19 Court's language --

20 MS. SATTER: Okay.

21 JUDGE MORAN: -- okay? And all the authority
22 that say what that language is supposed to mean for

1 this Commission.

2 MS. SATTER: Well, then, I would request that
3 the motion either be granted or denied but not just
4 held. Because if you are denying it because it's
5 moot, if you are denying it on the substance, then we
6 will be in a position to respond.

7 JUDGE MORAN: Okay. I will look at how that
8 administrative notice --

9 MS. SATTER: Fits in.

10 JUDGE MORAN: -- fits in. To me it didn't seem
11 relevant at all because it went to something that was
12 subsumed within the umbrella of my ruling. I mean,
13 if I'm saying that there's no new evidence and no
14 review of the existing record, doesn't that, in fact,
15 answer the request for administrative notice?

16 MS. SATTER: I mean, I would have to see --

17 JUDGE MORAN: I think it does.

18 MS. SATTER: All I'm asking is to stay it.

19 JUDGE MORAN: I will look at it again and I
20 will deal with it appropriately in my ruling. How
21 about that?

22 MR. PACE: Thank you.

1 MS. SATTER: Just make a ruling, you know.

2 JUDGE MORAN: Even if it's in a footnote.

3 MS. SATTER: I put it in a footnote but then I
4 put it in a motion.

5 MS. SUNDERLAND: And I responded in a footnote.

6 MR. HARVEY: I discovered some time ago that
7 when documents were being reviewed you could put
8 things in footnotes that wouldn't necessarily get
9 seen by people who were reviewing the documents if
10 they didn't do it in print format which allows one to
11 have a certain amount of harmless fun at the -- you
12 know.

13 JUDGE MORAN: Okay. With that, is there
14 anything that we need to do further on this --

15 MS. SATTER: We'll await your ruling.

16 JUDGE MORAN: -- case?

17 MR. CHORZEMPA: We'll be working together to
18 file something on the 1st of the month on --

19 MR. HARVEY: That's been duly circulated and is
20 now, you know...

21 JUDGE MORAN: Okay. Well, it seems like
22 anything that's going to happen from here on in would

1 be only at the direction of the Commission and not at
2 my direction. Therefore, I will today -- noting that
3 we don't need to meet for any other purposes, mark
4 the record heard and taken. If there is such a thing
5 on this remand.

6 MS. SUNDERLAND: I was just going to say, I'm
7 not sure there is a record because it's already heard
8 and taken.

9 MR. HARVEY: It's been marked heard and taken
10 and there is -- there was no motion reopening it for
11 any reason, so I don't think you have to do that
12 unless you want to --

13 JUDGE MORAN: Okay. Fine.

14 MS. SUNDERLAND: Just declare the briefing
15 cycle closed for this round.

16 JUDGE MORAN: Okay. The briefing cycle is
17 closed and I guess everything after this will be done
18 on paper, so we need not set any other dates. Okay?
19 Unless, of course, the Commission rules otherwise.

20 (Whereupon, the hearing in the
21 above-entitled matter was
22 continued sine die.)